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BY A.K. Bauman

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State Bar I.D. No. 005188

Attorney for Verde Ditch Company

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF YAVAPAI**

GEORGE W. HANCE, et al.,

Plaintiffs,

vs.

WALES ARNOLD, et ex., et al.,

Defendants.

No. P1300CV4772

**PETITION RE:  
CONSTRUCTION CONTRACT  
FOR DITCH PIPELINE  
IMPROVEMENTS TO THE  
VERDE DITCH**

In the matter of the VERDE DITCH )  
COMPANY )

(Ex Parte)

Reed McManus, Jake McCune, Cort Monroe, Albert Dupuy, Jr., and Craig Cooley,  
Commissioners of the Verde Ditch Company, through undersigned counsel, respectfully request that  
the Court approve the Commissioners' execution of a Verde Ditch Piping Agreement for

1 Infrastructure Improvements (hereinafter “the Agreement”). The Commissioners further request  
2 the Court ratify the Commissioners’ execution of the Agreement with The Nature Conservancy, on  
3 behalf of the Verde Ditch Company, and authorization and approval to effectuate and complete the  
4 terms of the Agreement on behalf of the Verde Ditch Company.  
5

## 6 **BACKGROUND**

7  
8 1. The Rules and Regulations promulgated in 1989 governing the Verde Ditch Company  
9 do not provide authority for the Commissioners to seek grants or enter into agreements with other  
10 entities or organizations for Ditch improvements. The Verde Ditch Commissioners have been  
11 interacting with representatives of various governmental agencies and public/private entities to  
12 improve the water management and efficiency of the Verde Ditch to benefit all of the Shareholders  
13 and which projects further to provide additional benefits to other Verde River water users including  
14 fish, fowl, and other wildlife, recreational users, and other individuals or entities entitled to Verde  
15 River water or otherwise interested in the sustainability of the Verde River by upgrading ditch  
16 infrastructure to reduce water losses resulting from ditch inefficiencies such as evaporation, seepage,  
17 infiltration, evapotranspiration, erosion and bank failure.  
18  
19  
20

## 21 **AGREEMENT PROVISIONS**

- 22 2. The Agreement will allow the Verde Ditch Company to:
- 23 a. Replace an existing open ditch along a portion of Salt Mine Road to reduce  
24 operational costs; improve water conveyance abilities, safety and increased  
25 efficiency for water delivery to Verde Ditch Shareholders.  
26  
27  
28



1           4.     Attached hereto is a copy of the Verde Ditch Piping Agreement. A full set of plans,  
2 permits and engineering specifications are located in the Verde Ditch office.

3  
4           5.     The project improvements will require a dry ditch. Absent adverse weather or other  
5 delays, the Commissioners believe that the work can be completed during the normal 2020-2021  
6 winter maintenance schedule. The Verde Ditch Company proposes to use a portion of the existing  
7 maintenance and reserve funds budgeted to fund the \$30,000 contribution by the Verde Ditch  
8 Company. The Verde Ditch Company has worked cooperatively with the Conservancy in the  
9 selection of a general contractor and has reviewed the construction plans and specifications. The  
10 property owners where the pipeline will be installed to replace the open ditch have been consulted  
11 about the project and the need for them to address any drainage concerns resulting from the removal  
12 of the open ditch. The general contractor will be responsible for coordination of traffic flows,  
13 access and availability with the three private property owners involved. The Commissioners believe  
14 that the funds budgeted for 2021 maintenance, repair and improvements are adequate to fund the  
15 financial commitment from the Verde Ditch Company to the project consistent with the engineered  
16 specifications and requirements.  
17  
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21           The Verde Ditch Company has worked cooperatively with The Nature Conservancy in other  
22 projects on the Ditch and believes this project reflects the continuation of cooperative long term  
23 improvements which promote better water management and improve Ditch efficiencies. The funds  
24 (and technical support) provided by The Nature Conservancy remain without any contractual  
25 impairment, or limitations or restrictions of use or rights to use Verde River water by the Verde  
26  
27  
28

1 Ditch Shareholders.

2 6. The Verde Ditch Company will file periodic reports with the Court on the progress  
3 of the project and will file a separate accounting for all funds expended by the Verde Ditch  
4 Company at the conclusion of the project.  
5

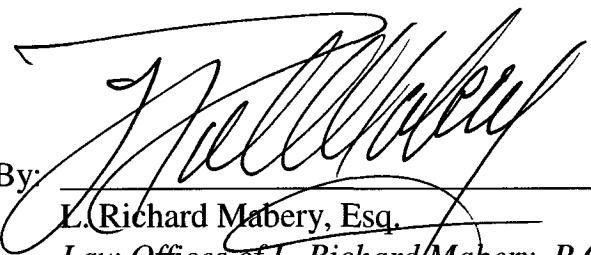
6 7. The Verde Ditch Commissioners believe that this project will provide the framework  
7 to seek additional grant or similar cost sharing projects that improve water management and  
8 efficiencies to promote the sustainability of the Verde River.  
9

10 **CONCLUSION:**

11 The Commissioners of the Verde Ditch respectfully request that the Court ratify and approve  
12 the Verde Ditch Piping Agreement as submitted and further grant the Verde Ditch Commissioners  
13 the authority to proceed consistent with the terms of the Verde Ditch Piping Agreement.  
14

15 **RESPECTFULLY SUBMITTED** this 21st day of December, 2021.  
16

17 **L. RICHARD MABERY, P.C.**

18  
19  
20  
21 By: 

22 L. Richard Mabery, Esq.  
23 Law Offices of L. Richard Mabery, P.C.  
24 234 North Montezuma Street  
25 Prescott, Arizona 86301  
26 Attorney for Verde Ditch Company  
27  
28

/clr



Contract Number:	AZFO-211022
Accounting Information --	
Project Name:	AZ 1 Verde River; Pulliam Irrigation Ditch Piping
Project-Award-Activity Number:	P102125; F106805
Source of funds:	U.S. Government <input type="checkbox"/> State Government <input type="checkbox"/> Private <input checked="" type="checkbox"/> Private as Gov't Match <input type="checkbox"/>

### Verde Ditch Piping Agreement

This is an Agreement between **The Nature Conservancy**, a District of Columbia non-profit corporation (the "**Conservancy**"), acting through its:

Conservancy Office/Department: Arizona Business Unit  
Address: 1510 E. Fort Lowell Rd., Tucson, AZ 85719  
Name and Title of Contact: John Ford, Verde River Ag Program Coordinator  
Telephone Number: (707) 483 - 8697

and the following ditch entity:

Ditch Entity: Verde Ditch Company  
Name and Title of Contact: Al Dupuy, Ditch Commissioner  
Address: P.O. BOX 2345  
Camp Verde, AZ 86322  
Telephone Number: (928) 300-4578

#### 1. Project Summary

The Nature Conservancy's efforts in the Verde Valley are focused on improving the river and riparian habitats of the Verde River and its tributaries. Preserving the rural, agricultural characteristics of the Verde Valley are complementary to our efforts to improve the river and riparian habitat. The Conservancy recognizes the importance of the irrigation conveyance systems to the community and ecosystem of the Verde Valley.

Through this project the Conservancy will work with the Verde Ditch Company to enclose 1,280 feet of currently open, unlined ditch into pipe, through a cost share agreement described below in section 3. The project will be completed through the hiring of a qualified contractor that is mutually agreed upon by both parties and installation per a design agreed upon by both parties.

Given the benefits of this project, both the Conservancy and the Verde Ditch Company agree to move forward with this project as soon as feasible with a target of March 15, 2022 for completion of the installation.

**2. Roles and Responsibilities**

**A. The Verde Ditch Company and the Conservancy both agree to the following:**

- 1) Both parties shall work with qualified irrigation system designer contracted by The Nature Conservancy to determine system design and selection of the materials for the project prior to beginning construction.
- 2) Each party will designate a representative to select, oversee and approve work completed by contractor.
- 3) Completion of this project does not subject the Verde Ditch Company or its shareholders to any restrictions on water rights, claims or water use now or in the future.
- 4) Payment for any modifications to the design proposed by the Verde Ditch Company after project construction begins will be negotiated between both parties.
- 5) All equipment and materials that are to be installed as part of the irrigation project will belong to the Verde Ditch Company upon delivery of materials to project area. Materials will be covered by insurance from General Contractor for loss and damage prior to acceptance of completed installation.

**B. The Conservancy shall:**

- 1) Promote the water quantity and quality savings provided by the project including to project funders.
- 2) Enter into agreements with qualified vendors and contractors to purchase materials, and engineer and install the pipeline, following the Conservancy's standard procurement policies.
- 3) Ensure that the structure is built, and functions, as recommended by qualified engineering consultants.

**C. The Verde Ditch Company shall:**

- 1) Designate a primary point-of-contact person who will convey decisions made on behalf of the Ditch Company in review and approval of project designs and installation.
- 2) The Verde Ditch Company is under the jurisdiction of the Yavapai County Superior Court (Court). The designated point-of-contact person will ensure that all communications and approvals from the Court are secured as needed.

- 3) Be responsible for Verde Ditch Company and Court approval of the project, including determination of appropriate water delivery turnout locations, permitting, and any legal issues that may arise associated with the project regarding Verde Ditch Easements and shareholder interaction.
- 4) Ensure legal access to the ditch to all contractors involved in designing and installing the irrigation pipeline.
- 5) Assume all liability associated with the maintenance, and any other unintended effects associated with the pipeline following completion of the pipe installation.
- 6) Ensure that the installation of the pipe meets ditch board expectations and industry standards.
- 7) Maintain system following manufacturer recommendations after installation of pipeline.
- 8) Provide access for Conservancy staff through January 1, 2025.

### **3. Payments.**

The total project cost is estimated to be \$170,000. The Conservancy will purchase materials and contract for installation of the project, at a total cost not to exceed \$170,000. Upon completion and acceptance of the project, the Verde Ditch Company agrees to pay \$30,000 to the Conservancy as cost share for the project, upon receipt of an invoice from the Conservancy which will include purchase orders and vendor payments to document total project costs and completion documentation.

If total project cost exceeds \$170,000, the Conservancy will notify the Verde Ditch Company as soon as the cost increase is known and seek resolution on how additional costs will be shared.

### **4. Term and Termination**

This Agreement shall begin upon the date of the final signature below and shall expire on January 1, 2025. Failure to adhere to the terms and conditions herein by the Verde Ditch Company shall constitute breach of this Agreement.

### **5. Liability**

The Verde Ditch Company shall perform its obligations under this Agreement at its own risk. Any claim, liability or loss arising out of any activity under this Agreement after the completion of installation shall be borne entirely by the Verde Ditch Company. Notwithstanding the above, the Conservancy will select a contractor that agrees to the indemnification and insurance provisions of the Conservancy's standard contract for services that includes general workmanship for a licensed contractor that covers The Nature Conservancy and Verde Ditch Company.

**6. Compliance with Laws**

The Verde Ditch Company represents and warrants that it will comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements that may apply to the work performed under this Agreement and that it has or will obtain at its expense any required permits or licenses.

**7. Certification of Conflict of Interest Determination**

The Verde Ditch Company certifies that the information it has provided on **Exhibit B** entitled "Conflict Inquiry Form" is true and correct to the best of the Verde Ditch Company's knowledge. In the event that any material misrepresentation in the Conflict Inquiry Form is discovered during the term of this Agreement, the Conservancy may elect to declare this Agreement null and void and immediately terminate it.

**8. Miscellaneous**

The subject property is critical to the implementation of this Agreement. Therefore, Verde Ditch Company may not substitute property nor assign responsibility for the obligations herein to any other party. Furthermore, Verde Ditch Company may not use The Nature Conservancy's name or logo without prior written consent of the Conservancy. This Contract shall be interpreted, governed and enforced under the laws of Arizona. This Contract shall become binding when signed by the parties and approved by Yavapai County Superior Court. This Contract supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Contract between the parties relating to the work described herein. No amendments shall be effective unless in writing and signed by both parties.

**The Nature Conservancy**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**The Verde Ditch Company**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A: Project Map

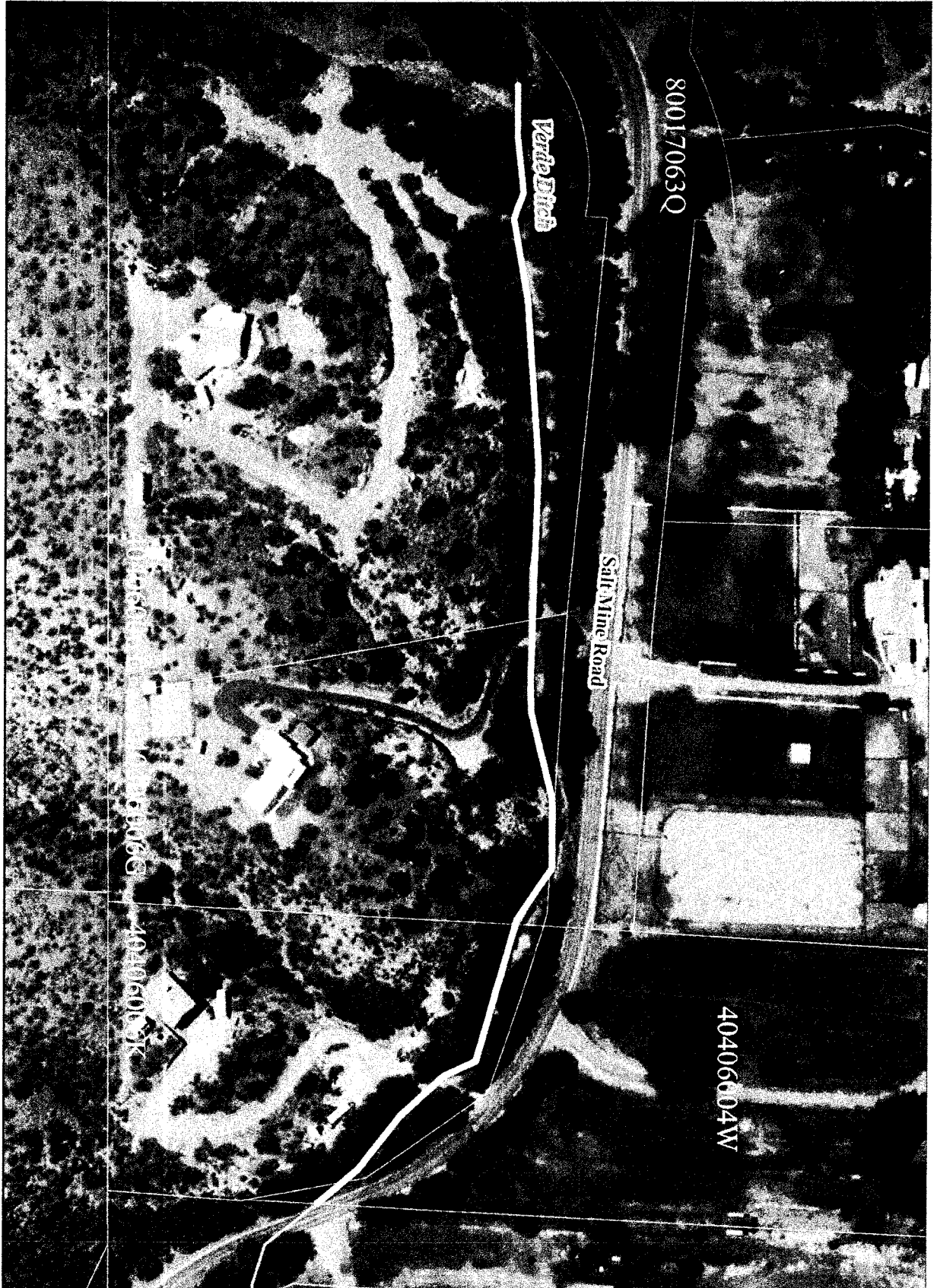
**Exhibit B: Conflict Inquiry Form**

Exhibit A: Project Map

Verde Ditch Proposed Piping: 1284 ft

Township 13 N; Range 5E; Section 8;  
Quarter Quarter SWSW, SESW

0 140 Feet



## CONFLICT INQUIRY FORM

STEP 1: DESCRIPTION OF PARTIES & TRANSACTION	
Name of individual or organization entering into transaction with TNC:	Verde Ditch Company
Legal identity of individual or organization* entering into transaction with TNC (select one):	<input type="checkbox"/> Individual <input type="checkbox"/> For-Profit Organization <input type="checkbox"/> Non-Profit Organization
<small>**Organization* includes a for profit corporation, partnership, trust, estate, joint venture, limited liability corporation, professional corporation, an unincorporated entity, a foundation, public board, commission, 501(c)(3) or other charitable organization.</small>	
Total dollar value of transaction: <small>Include type of currency. Also, if no cash is involved, provide the value of the benefits to be exchanged between the parties.</small>	\$170,000.
Type of Transaction (select one):	<input type="checkbox"/> Contract for Services <input type="checkbox"/> Grant Agreement <input type="checkbox"/> Purchase Order <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Real Estate Transaction <input checked="" type="checkbox"/> Other
If you selected "Other" or "Real Estate," include description here (for real estate, describe property, size, and type of deal (sale, gift, etc.)):	Agreement with ditch company for piping installation.

STEP 2: DEFINITIONS & QUESTIONS (Complete <u>only</u> the section relevant to your organization)		
<p>(1) <b>TNC Key Employees and Board of Directors:</b> Please refer to the <u>attached list</u> of Key Employees and members of Board of Directors (includes individuals who have left relevant TNC positions within the past five (5) years)</p> <p>(2) <b>Substantial Contributors:</b> Individuals or organizations who have made total aggregate contributions to TNC of (i) ≥ US \$5 million during the current fiscal year or (ii) ≥ US \$25 million within the last five (5) fiscal years. Fiscal years run from July 1st through June 30th.</p> <p>(3) <b>Family Members and Close Relatives:</b> Family members of any individual listed above, such as spouse, domestic partner, parent, sibling, child, dependent, other progeny and ancestors.</p>		
SECTION 1. INDIVIDUALS (explain any "yes" answers in Step 3):	Yes	No
a. Are you now, or have you been in the last five (5) fiscal years, (i) a TNC "Key Employee" or (ii) a member of the TNC Board of Directors?		
b. Are you now, or have you been in the last twelve (12) months, (i) a TNC Employee, (ii) a Chapter Trustee, or (iii) a member of a Country Program Advisory Council or a similar advisory group?		
c. Are you a Substantial Contributor to TNC?		
d. To your knowledge, are you a family member or close relative of any individual identified in paragraphs a, b, or c above?		

<b>SECTION 2. FOR-PROFIT ORGANIZATIONS (explain any "yes" answers in Step 3):</b>	<b>Yes</b>	<b>No</b>
a. Is your organization a Substantial Contributor to TNC?		
b. Now, or at the time of the proposed transaction, to the best of your knowledge, do any of the following (individually or collectively with other such persons) (i) own more than <u>5% of the stock or value</u> of your organization (directly or indirectly) and/or (ii) have a controlling influence over the organization's management or policies (ex. key management or board member): <ul style="list-style-type: none"> <li>• TNC employee (or former employee who left within the last twelve (12) months);</li> <li>• TNC Key Employee;</li> <li>• TNC Board Member;</li> <li>• Substantial Contributor to TNC;</li> <li>• TNC Chapter Trustee or Advisory Council Member for TNC or TNC's related entities (or former trustees/members who left within the last twelve (12) months); and/or</li> <li>• Family members or close relatives of the above individuals.</li> </ul>		
c. Now, or at the time of the proposed transaction, have or will any TNC Key Employees or members of the Board of Directors serve in the following positions of your organization? <ul style="list-style-type: none"> <li>• Officer, director, trustee, key employee, or partner;</li> <li>• Member (if your organization is a limited liability corporation); and/or</li> <li>• Shareholder (if your organization is a professional corporation).</li> </ul>		
<b>SECTION 3. NON-PROFIT ORGANIZATIONS (explain any "yes" answers in Step 3):</b>	<b>Yes</b>	<b>No</b>
a. Now, or at the time of the proposed transaction, do any of the following (individually or collectively with other such persons) have the ability to influence management of the entity: <ul style="list-style-type: none"> <li>• TNC employee (or former employee who left within the last twelve (12) months);</li> <li>• TNC Key Employee;</li> <li>• TNC Board Member;</li> <li>• Substantial Contributor to TNC;</li> <li>• TNC Chapter Trustee or Advisory Council Member for TNC or TNC's related entities (or former trustees/members who left within the last twelve (12) months); and/or</li> <li>• Family members or close relatives of the above individuals.</li> </ul>		

<b>STEP 3: COMMENTS (Explain any "yes" answers checked above. Attach additional pages as necessary.)</b>

--

#### STEP 4: NOTICE OF TNC CODE OF CONDUCT & SIGNATURES

TNC expects itself and everyone with whom it does business to conduct themselves in ways that are consistent with TNC's Code of Conduct found at [www.nature.org/codeofconduct](http://www.nature.org/codeofconduct). Anyone (whether a part of TNC or not) may contact the TNC Helpline (anonymously, if desired) with questions, concerns, or suspected violations at [www.nature.org/tnchelpline](http://www.nature.org/tnchelpline).

The undersigned certifies the information in the inquiry form is true and correct to the best of their knowledge.

<b>Signature:</b>	
<b>Printed Name:</b>	
<b>Title (if for an organization):</b>	
<b>Address:</b>	
<b>Date of Signature:</b>	

### TNC KEY EMPLOYEES & MEMBERS OF BOARD OF DIRECTORS

The following are individuals who are currently or have been, during the preceding five (5) fiscal years, a TNC "Key Employee" or a member of the Board of Directors.

List Current as of July 15, 2021

<u>Key Employees</u>	<u>Other/Former Key Employees</u>		<u>Current Board of Directors</u>	<u>Prior Board Members</u>
Keith Arnold Nathalie Augustin David Banks Michelle Beistle Matt Brown Michael Doane Jan Glendening Meg Goldthwaite Katharine Hayhoe Charlotte Kaiser Marianne Kleiberg Leonardo Lacerda William McGoldrick Tom Neises Bola Olusanya James Page Jeffrey Parrish Lynn Scarlett Theresa Shaw Michael Sweeney Michael Tetreault Ian Thompson (interim) Bill Ulfelder Joni Ward Leonard Williams	Justin Adams Kacky Andrews James Asp Charles Bedford Karen Berky Giulio Boccaletti Mark Burget Mario D'Amico Maria Damanaki William Ginn Elizabeth Gray Santiago Gowland Wisla Heneghan Sherri Hammons Steve Howell Jack Hurd Joe Keenan Richard Loomis Robert McKim Brian McPeck Pascal Mittermaier Seema Paul Hugh Possingham Glenn Prickett Aurelio Ramos	Heather Tallis Mark Tercek Marc Touitou Peter Wheeler Janine Wilkin Heather Wishik Heather Zichal	Amy Batchelor John Bernstein Michelle DePass William Frist Joseph H. Gleberman Harry Hagey Margaret Hamburg Shirley Ann Jackson Sally Jewell Nancy Knowlton Edwin Macharia Claudia Madrazo Craig McCaw Jennifer Morris Ana M. Parma Douglas Petno Vincent Ryan Brenda Shapiro Kent J. Thiry Frances A. Ulmer Kevin Weil Ying Wu	Teresa Beck David Blood Shona L. Brown Gretchen C. Daily Steven A. Denning Laurence Fink Jeremy Grantham Andrew Liveris Frank E. Loy Jane Lubchenco Jack Ma Thomas J. Meredith Thomas Middleton Stephen Polasky Muneer A. Satter Rajiv Shah Mark Tercek Thomas J. Tierney Moses Tsang P. Roy Vagelos Margaret C. Whitman

### TNC's Related Entities (If applicable)

<u>Current Board Members:</u>	<u>Key Employees (members of Related Entity leadership team):</u>